

¹ All references to statutes are to RSMo 2000, unless otherwise indicated.

was Defendant's statutory employee pursuant to section 287.040.1 and, as such, "Plaintiff's exclusive remedy for his alleged injuries is through Missouri's Workers' Compensation Law." On April 11, 2008, the trial court sustained Defendant's motion and entered a judgment dismissing Plaintiff's petition "for lack of subject matter jurisdiction." Plaintiff appeals this judgment of dismissal. Finding that the trial court has subject matter jurisdiction, we reverse and remand.

"Subject matter jurisdiction . . . is . . . the court's authority to render a judgment in a particular category of case." *J.C.W. ex rel. Webb v. Wyciskalla*, 2009 WL 186140 at *2 (Mo. banc 2009). "[T]he subject matter jurisdiction of Missouri's courts is governed directly by the state's constitution. Article V, section 14 sets forth the subject matter jurisdiction of Missouri's circuit courts in plenary terms, providing that '[t]he circuit courts shall have original jurisdiction over *all* cases and matters, civil and criminal.'" *Id.* "[S]tatutes that would bar litigants from relief" cannot and do not infringe upon the subject matter jurisdiction of Missouri's circuit courts as granted by the constitution. *Id.* "[T]he courts of this state should confine their discussions of circuit court jurisdiction to constitutionally recognized doctrines of . . . subject matter jurisdiction[.]" *Id.*

As so confined, this court's subject matter jurisdiction analysis in the instant case is as succinct as that in *J.C.W.*: "The present case is a civil case. Therefore, the circuit court has subject matter jurisdiction and, thus, has the authority to hear this dispute." *Id.* Defendant's motion to dismiss did not mount a constitutional challenge to the trial court's subject matter jurisdiction, but rather, asserted that the exclusive workers' compensation remedy provided by section 287.120 deprived the trial court of subject matter jurisdiction. While this statute, depending upon the underlying facts in this case, may or may not ultimately operate to bar

Plaintiff from any relief on his claim, it does not deprive the trial court of its constitutionally granted subject matter jurisdiction to hear and decide Plaintiff's tort claim. *Id.* Thus, the trial court erred in dismissing Plaintiff's petition "for lack of subject matter jurisdiction."

Citing *Harris v. Westin Management Co. East*, 230 S.W.3d 1, 2-3 (Mo. banc 2007), Defendant contends that "[a] motion to dismiss for lack of subject-matter jurisdiction is the appropriate method for raising a defense based on the exclusive jurisdiction of the Workers' Compensation Act." Confined by the Supreme Court's constitutional subject matter jurisdictional analysis announced in *J.C.W.*, this court concludes that the analytical foundation for *Harris* and the line of cases relied upon by *Harris* in support of Defendant's stated contention is no longer valid and that these cases, as to that contention, should no longer be followed.

The reasoning behind this conclusion begins with the proposition that "the question as to whether or not the Work[ers'] Compensation Act, section 287.010 et seq., is applicable to a claim for which recovery is sought in a common law action is an affirmative defense and the burden of establishing same rests upon the defendant." *Roberts v. Epicure Foods Co.*, 330 S.W.2d 837, 839 (Mo. 1960) (citing *McKay v. Delico Meat Products Co.*, 351 Mo. 876, 174 S.W.2d 149; *McDaniel v. Kerr*, 364 Mo. 1, 258 S.W.2d 629). *Roberts* held that this affirmative defense must be raised in a responsive pleading and that section 509.290 did not authorize it to be raised in a motion to dismiss. *Roberts*, 330 S.W.2d at 839-40. Section 509.290 was the statutory predecessor to Rule 55.31, *Lamar v. Ford Motor Co.*, 409 S.W.2d 100, 103 (Mo. 1966), which was the rule predecessor to our current Rule 55.27,² *Empiregas, Inc., of Noel v. Hoover Ball & Bearing Co.*, 507 S.W.2d 657, 660 n.4 (Mo. 1974).

² All references to rules are to Missouri Court Rules (2008), unless otherwise indicated.

Rule 55.27(a) currently provides in pertinent part:

In 1982, the Eastern District of this court, in *Parmer v. Bean*, 636 S.W.2d 691 (Mo.App. 1982), concluded:

When an employer-employee relationship exists, and an accident occurs in the course of employment[,], a common law action for damages will not lie. Sheen v. Dibella, 395 S.W.2d 296, 298 (Mo.App.1965). *Section 287.120 of the Workmen's Compensation Law has abrogated the original jurisdiction of the courts over the aforementioned class of cases and vested that jurisdiction exclusively in the Workmen's Compensation Commission. Kemper v. Gluck, 327 Mo. 733, 39 S.W.2d 330, 332 (banc 1931); Sheen v. DiBella, supra. When a circuit court lacks the jurisdiction to entertain a class of cases and determines the issues sought to be presented therein, it lacks *subject matter jurisdiction*. It has no right, power or authority to act in such capacity. In re Buckles, 331 Mo. 405, 53 S.W.2d 1055, 1057 (1932).*

Parmer, 636 S.W.2d at 695 (emphasis added). In reaching these conclusions, the court observed that the "quantum of proof" requiring a trial court to grant a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 55.27 is not high because:

There are several reasons for a lower burden of proof. One is that a cause of action dismissed for lack of subject matter jurisdiction is dismissed without prejudice. Stix & Co. Inc. v. First Mo. Bank & Trust Co., 564 S.W.2d 67, 70 (Mo.App.1978). The plaintiff is free to refile another action in the same tribunal or another tribunal which has jurisdiction. Id. *The more important reason is that subject matter jurisdiction goes to the very heart of the court's power to act and determine the rights and duties of the parties. When the court lacks subject matter jurisdiction, any action it takes is null and void. McCoy v. Biegel, 305 S.W.2d 29, 34, 35 (Mo.App.1957).*

Every defense, in law or fact, to a claim in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter,
- (2) Lack of jurisdiction over the person,
- (3) That plaintiff does not have legal capacity to sue,
- (4) Insufficiency of process,
- (5) Insufficiency of service of process,
- (6) Failure to state a claim upon which relief can be granted,
- (7) Failure to join a party under Rule 52.04,
- (8) That plaintiff should furnish security for costs,
- (9) That there is another action pending between the same parties for the same cause in this state,
- (10) That several claims have been improperly united,
- (11) That the counterclaim or cross-claim is one which cannot be properly interposed in this action.

Id. 694-95 (emphasis added). The *Parmer* court then proceeded to hold that not only was a motion to dismiss for lack of subject matter jurisdiction authorized by Rule 55.27, but it concluded that "regardless of the manner in which the applicability of the Work[ers'] Compensation Law is raised as a defense to a common law cause of action, the trial judge must initially treat it as a motion to dismiss for lack of subject matter jurisdiction." *Id.* at 696. This was so, the court reasoned, because "lack of subject matter jurisdiction can be raised at anytime during the proceedings" and "[t]he defense cannot be defeated by waiver, acquiescence or even express consent." *Id.* at 695.

Using a similar but somewhat abbreviated subject matter jurisdiction analysis, this district held likewise in *Shaver v. First Union Realty Mgmt., Inc.*, 713 S.W.2d 297, 299 (Mo.App. 1986). Thereafter, citing *Parmer* and *Shaver*, the Supreme Court of Missouri held that "[a] motion to dismiss for lack of subject matter jurisdiction is the proper method to raise the defense of workers' compensation." *State ex rel. McDonnell Douglas Corp. v. Ryan*, 745 S.W.2d 152, 153 (Mo. banc 1988). This proposition was then reaffirmed in *James v. Poppa*, 85 S.W.3d 8, 9 (Mo. banc 2002), and *Harris*, 230 S.W.3d at 3.

The statutory subject matter jurisdiction analysis upon which *Parmer*, *Shaver* and their Supreme Court progeny are premised is eviscerated by the constitutional subject matter jurisdiction analysis as mandated by *J.C.W.* As previously indicated, each of the *Parmer-Shaver* cases is founded upon the statutory bar to relief in section 287.120 denying the circuit court subject matter jurisdiction to decide a common law tort action when an employer-employee relationship exists and an accident occurs in the course of employment. These cases then lay upon this foundation the Rule 55.27 authority to raise a defense of lack of subject matter jurisdiction by motion, rather than by responsive pleading, to authorize the assertion of the

section 287.120 workers' compensation's exclusivity remedy by a motion to dismiss for lack of subject matter jurisdiction with its accompanying lower burden of proof and the ability to assert it at anytime during the proceeding. It is clear from *J.C.W.*, however, that the section 287.120 statutory bar to relief foundational element of the *Parmer-Shaver* line of cases cannot be elevated to the level of countermanding the subject matter jurisdiction otherwise granted to the circuit court to hear and decide a common law tort action by article V, section 14, of our constitution. *J.C.W.*, 2009 WL 186140, at *2.

The judgment of the trial court dismissing Plaintiff's petition for lack of subject matter jurisdiction is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Gary W. Lynch, Chief Judge

Parrish, J., and Scott, J., concur.

Division II

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Attorney for Appellant: Donald E. Woody, HALL, ANSLEY, RODGERS & SWEENEY, P.C.,
Springfield, Missouri

Attorneys for Respondent: James B. James and Kristie S. Crawford, BROWN & JAMES, P.C.,
Springfield, Missouri